

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
September 7, 2017**

In attendance: Don Marshall, Chairperson; and Commission Members John Riggs, Joel Sherman, Dr. Karla Rhay, and Dante Robinson.

Dr. Rhay attended via video-conference from the CDI Inland Empire Regional Office. Public notice and contact information for the additional video conference location was included in the meeting agenda posted on the CDI public website.

Others present: George Mueller, Deputy Commissioner (DC), Enforcement Branch, California Department of Insurance (CDI); Laureen Pedroza, Assistant Chief (AC), CDI Enforcement Branch; Vanessa Himelblau, Senior Staff Counsel, CDI Legal Division; Vern Pierson, District Attorney (DA) for El Dorado County and Co-Chair of the California District Attorney Association's Insurance Fraud Committee.

The meeting started at 10:35 am.

Opening Remarks

Chairperson Marshall opened the meeting at 10:35 am and asked the Commissioners if they wished to make any opening comments.

Commissioner Riggs commented that he would like a list of the last five years of assessments.

Chairperson Marshall responded that he had recently looked at the numbers for this meeting and indicated that the first three years were the same and then there were increases in the last two years. He recalled that there was one big jump in 1990 and then small jumps since then.

Commissioner Sherman commented that the average increase over the last 5 year period was approximately 2.3%. He then asked how much fraud had grown.

Chairperson Marshall responded that it can't be measured but in the last few years large provider fraud cases have increased.

Dr. Rhay asked what the impact is to employers.

Commissioner Riggs repeated the question, what is the impact on employers.

CDI's AC Pedroza informed the Commissioners that the impact on employers would be covered during the Program Overview presentation in Agenda Item II.

There were no additional opening comments.

Chairperson Marshall then asked for a motion to approve the submitted summary minutes from the June 22, 2016, meeting.

Motion

Commissioner Riggs made a motion to accept the June 21, 2017, summary minutes as submitted. Commissioner Sherman seconded the motion.

Action

A roll call vote was taken. The Fraud Assessment Commission (FAC), voted unanimously to approve the summary meeting minutes.

Old Business

Chairperson Marshall moved to the next agenda item, old business. AC Pedroza explained that the change in the number of Suspected Fraudulent Claims (SFCs) is primarily due to quality and efficiency and a change in National Insurance Crime Bureau (NICB) member carrier reporting.

Chairperson Marshall then turned the meeting over to Vanessa Himmelblau, Senior Staff Counsel, CDI Legal Division. In response to discussion and questions raised at the prior meeting, Ms. Himmelblau made a presentation on the Bagley-Keene Open Meeting Act (Bagley-Keene) as it pertains to the RFA review process and review of confidential Attachment B.

Ms. Himmelblau started with a brief overview of how the Bagley-Keene Open Meeting Act applies to the FAC and the Insurance Commissioner's Review Panel meetings. She referred to Bagley-Keene § 11121.

Ms. Himmelblau further explained that the FAC is established by Statute (California Insurance Code Section 1872.83) and that the composition of the Insurance Commissioner's Review Panel is spelled out in the California Code of Regulations (CCR, Title 10, Chapter 5, Sub-Chapter 9, Article 3, Section 2698.55) and specifies that two FAC Commissioners will participate.

Ms. Himmelblau then referenced Bagley-Keene § 11121(d) and commented that FAC Commissioners serve on the Insurance Commissioner's Review Panel per regulation, set assessments, and review grant applications and that the two FAC Commissioners are serving in an official capacity as defined by Bagley-Keene § 11121(d).

Chairperson Marshall commented that the FAC provides Advice and Consent, the funding recommendations are the Insurance Commissioner's, and the Insurance Commissioner's recommendations may be different than the Review Panel.

Chairperson Marshall expressed that when reviewing the application's Attachment B there are cases that cover multiple years and, due to the inability to ask questions, it is difficult to know what the current activity is and where the case is in the process.

Ms. Himmelblau responded by offering various options.

Chairperson Marshall commented on the statute and regulations and the application review process and indicated that he would like to see changes.

Commissioner Sherman commented that he has been down the legislative change process and it is not easy. It is long and often has unintended consequences. He also would like to see changes to the Request for Application (RFA) process.

Ms. Himelblau commented on the Commissioners' ability to ask CDI for information.

Commissioner Sherman commented on information he might find helpful and Chairperson Marshall commented on the significant effort involved in preparing such an analysis.

AC Pedroza suggested that the discussion regarding RFA changes be continued to later in the meeting under agenda item V(b)(i).

Commissioner Rhay asked for a clarification of the issue being discussed.

Chairperson Marshall summarized the topic as exploring ideas to address the issue of enabling a more thorough review of the applications, especially Attachment B.

Before moving to the next agenda item, Chairperson Marshall asked AC Pedroza to come forward. Chairperson Marshall acknowledged AC Pedroza's planned retirement and recognized her many years of public service and dedication to the fight against insurance fraud. Chairperson Marshall presented AC Pedroza with a Certificate of Appreciation from the Fraud Assessment Commission and a State flag.

Chairperson Marshall then turned the meeting over to DC Mueller.

Workers' Compensation Fraud Program Overview

DC Mueller acknowledged the efforts of the Media Office, Local Assistance, and the Fraud Division Operations staff in preparing today's presentation. He then introduced Vern Pierson, District Attorney for El Dorado County and Co-Chair of the California District Attorney Association's Insurance Fraud Committee.

DC Mueller and DA Pierson jointly presented the Workers' Compensation Fraud Program Overview for Fiscal Year (FY) 2016-17. The presentation included examples of statewide County successes in the Workers' Compensation Fraud Program areas.

The overview began with opening remarks by DA Pierson commenting on CDI and the District Attorneys' collaborative efforts and support from partnerships with other agencies, Special Investigative Units (SIUs), employers, and consumers. He also commented that fraud has changed over the years and we are increasingly finding sophisticated organized crime rings and some employer and medical professionals involved in elaborate schemes.

DC Mueller commented that our goal is to protect injured workers and consumers and to level the playing field for honest businesses.

DC Mueller and DA Pierson then presented slides and videos and talked about County efforts in fighting different types of insurance fraud and summarized some of their cases.

The discussion of Provider Fraud included cases from Nevada, Orange, San Diego, and San Mateo Counties; Premium Fraud included cases from Contra Costa, Monterey, Riverside, San Francisco, and Tehama Counties; Employer Defrauding Employee included cases from Humboldt, Los Angeles, Santa Clara, and Yolo Counties; Claimant Fraud included cases from Orange, San Diego, San Luis Obispo, Santa Barbara, Shasta, and Stanislaus Counties. The discussion then highlighted Education and Outreach efforts of the DAs and CDI and provided Case Updates.

DA Pierson then presented a series of financial and statistical charts and, on behalf of the District Attorneys, DC Mueller and DA Pierson requested a 15% increase over the current funding to start in FY 2018-19. DA Pierson then turned the meeting back to Chairperson Marshall.

Chairperson Marshall thanked the presenters and opened the floor to the Commissioners for discussion and questions.

Each of the Commissioners opened their comments by complimenting DC Mueller and DA Pierson on the quality of the presentation and the information provided.

Commissioner Rhay commented on the effectiveness of social media and described her experience with an outreach event. She commented that the assessment does not look big, but the economy may not be as robust in all areas.

Commissioner Riggs acknowledged issues with CDI's recruitment and asked DC Mueller where CDI is currently recruiting. DC Mueller responded by highlighting some of the places where CDI is conducting recruitment outreach.

Commissioner Sherman agreed with Dr. Rhay regarding the economic assessment. He expressed concern that fees will add up, grow, and expand. He indicated that he is responsible for looking at future years and was not in favor of the 15% increase.

DA Pierson responded that he also sees all the increases, that this program is different, and that this assessment does not reflect the growth in fraud or the growth in the workforce. DA Pierson further commented that the increase does not match the increased efforts by the Counties especially with the increase in provider fraud cases and the cost to prosecute.

Commissioner Sherman commented that he believes the analysis but that California is the most expensive place to do business and at some point businesses will start fleeing the state.

Commissioner Robinson commented that he supports more funding for fighting Workers' Compensation fraud and understands the relationship with the growing economy and the calculation of the cost.

Commissioner Sherman asked clarification questions regarding information presented in the charts and DA Pierson responded by explaining the calculations used.

Chairperson Marshall asked questions regarding the impact on CDI of recent salary increases and the proposed increase or no increase. AC Pedroza responded by explaining the impact on staffing levels.

Chairperson Marshall then commented on the funding split between CDI and the DAs and asked Ms. Himelblau if the FAC has to continue with the past practice. Ms. Himelblau confirmed that the statute split is 40%-40%-20% and that statute, not past practice, rules.

Ms. Himelblau commented that regulations are easier than statutes to amend or change and that the County Plan is the review document for determining funding recommendations.

DA Pierson commented that Counties collaborate and share expertise but the cost is paid by the County that has the expert and is not split. He further commented that when CDI had fewer investigators, the DAs stepped up and investigated and prosecuted cases. Shifting funds to CDI may result in more cases per prosecutor but less funding to cover the cost. Shifting the 60% - 40% split may shift the ability to prosecute.

AC Pedroza explained how unspent funds either go back to the Counties as carry-over for the next fiscal year or come back to the Program and become part of the offset.

Commissioner Rhay stated she had no comments.

Chairperson Marshall asked if there were any public comments.

Public Comments

Annie Michaels of Monterey County commented that she is part of a group representing smaller Counties and they share experts among Counties.

Chairperson Marshall commented that CDI is building a base of forensic auditors but there is a huge backlog.

There were no further public comments.

Chairperson Marshall moved to the next agenda item.

Aggregate Assessment

Chairperson Marshall asked the Commissioners for comments.

Commissioner Rhay commented that she agreed with Commissioner Sherman that California is very expensive, that the economic forecast is unpredictable, she does not see it increasing, and the change in minimum wage is having a big impact. She further commented that some cases seem to hang-on and she is struggling with a 15% increase.

Commissioner Riggs commented that the economic condition in California is challenging and that he hears both that it is increasing and decreasing. He commented that he is open to an increase but the question is how much and that the Commission has held the line for many years.

Commissioner Sherman commented that he was not happy with the 15% requested increase. He commented that he thinks minimum wage is driving the increase in payroll dollars and that there is a layer of employees that are receiving a non-equitable increase compared to the minimum wage increase. He further commented that he sees the payroll dollars going up, not necessarily the number of employees. He commented that he is having a difficult time following last year's 5% increase with a double digit increase, but agrees some increase is needed but not 15%.

Commissioner Robinson commented that, regardless of the number of employees, payroll dollars have increased.

Chairperson Marshall showed samples of ads and business cards that he had recently come across and commented that they appear to be from cappers and are examples of what is going on. (Copies of the samples were made available to the public on the table outside the meeting room.)

Commissioner Sherman commented that when some of these businesses are broken up they seem to be able to reinvent themselves.

Chairperson Marshall continued by commenting that he understands the impact on payroll but that the program is doing really well. He commented that there are new types of fraud constantly evolving and now may not be the time to limit funding. He pointed out that one case started in 2008 and is not yet in court, with it being appealed four times to the appellate and Supreme Court. This is an example of why we must keep the momentum going. He commented that the rate effect is statewide, that there is a large amount of insurance fraud, and that we are making inroads to organized crime--but many clinics that are shut down have reopened with the same players. He acknowledged this is only one assessment for employers.

Commissioner Riggs commented that employees are being replaced with technology and as a result there will be less employees and less workers' compensation dollars. He commented that it is easy to commit workers' compensation fraud in California.

Commissioner Sherman commented that the accused are using lien funds to fund prosecutions (defense) and we need to wait and see what the new legislation's impact is. He agreed with Commissioner Riggs about the "robotizing" of the employee base. He also commented that he needs to take into consideration that assessments from everywhere are cumulative and is a big number.

Chairperson Marshall stated that he was considering an 8% increase to support the increase in salary for CDI to increase staffing and the increase in salaries for the DAs and investigators. He pointed out that the positions approved for DIR to look at workers' compensation fraud are for data and do not take into consideration field activities. He commented on the continuing increase in chargeable fraud and the number of cases being worked in the field.

AC Pedroza commented that CDI and DIR entered into a joint Memorandum of Understanding (MOU) in December, 2016, that would provide referrals to the program. She also commented that the new legislation stays the lien when a suspect is charged and, if convicted, the lien is removed.

Chairperson Marshall commented that the increased DIR efforts should result in an increased caseload.

Commissioner Sherman commented that he recommends a 5% increase and then see what happens.

The Commissioners had no further comments.

Chairperson Marshall asked if there were any public comments.

Public Comments

Jennifer Snyder, Deputy District Attorney of Los Angeles County, commented that with big firms they need big resources. She commented on the effectiveness of quickly shutting down businesses, the increased need for expert staff, and that not having additional funding could result in delays or the need to turn cases over to other agencies.

Tony Ferrentino, Deputy District Attorney of Orange County, commented that the assessment has resulted in an increase in chargeable fraud and restitution. He then asked the board what they wanted to support—pay for premium fraud or pay for the assessment.

Dominic Dugo, Deputy District Attorney of San Diego, commented that the program has made massive progress statewide. Workers' compensation fraud is a \$4 billion problem with a \$60 million assessment.

Christine Garcia-Sen, Deputy District Attorney of Santa Clara County, commented that with the increase in fraud and the cost to fight it, additional funding is needed.

There were no further public comments.

Motion

Commissioner Sherman commented that he did not feel that 15% was appropriate and then made a motion for a 5% increase in the FY 2018-19 Aggregate Assessment.

Commissioner Rhay seconded the motion.

Commissioner Riggs commented that 15% was too high but would support 8%.

Commissioner Robinson agreed that 8% was more likely.

Action

A roll call vote was taken.

The motion failed with 2 'yes' votes from Commissioners Rhay and Sherman and 3 'no' votes from Commissioners Marshall, Riggs and Robinson.

Motion

Chairperson Marshall made a motion for an 8% increase in the FY 2018-19 Aggregate Assessment. Commissioner Riggs seconded the motion.

Action

A roll call vote was taken.

The motion passed with 3 'yes' votes from Commissioners Marshall, Riggs, and Robinson and 2 'no' votes from Commissioners Rhay and Sherman.

Chairperson Marshall then asked what the actual dollar amount of the FY 2018-19 Aggregate Assessment would be with the 8% increase.

Damian Scribner responded with the amount of \$67,124,258 with an estimated offset of \$3,000,000 for an estimated collection amount of \$64,124,258.

Commissioner Riggs left at this point and Chairperson Marshall moved to the next agenda item.

Other Business

Chairperson Marshall then brought the Commissioners' attention to the FAC's Goals and Objectives and asked if they wanted to continue with the current Goals and Objectives or make changes for the FY 2018-19. Chairperson Marshall polled the commissioners and they unanimously responded that they did not want to make changes.

Chairperson Marshall then moved to the next item and turned the meeting over to AC Pedroza. AC Pedroza commented that CDI conducted roundtable discussions with the DAs and has been working with DA representatives for the purpose of updating and identifying potential changes to the RFA. She commented that some of the changes might include limiting the number of pages and changes to Attachment B to enable tracking. She then asked if the FAC would like to participate.

Chairperson Marshall expressed his interest in forming a sub-committee and participating on it. He then asked the other Commissioners if they were interested in participating.

Commissioners Rhay and Sherman both expressed interest in participating but, realizing that only two Commissioners could participate, Commissioner Sherman removed himself and commented that Commissioner Rhay would be the right person since she has been recently involved in the review process.

Commissioner Robinson agreed that Commissioner Rhay should be the second member of the sub-committee.

Chairperson Marshall announced that the next meeting is scheduled for January 10, 2018.

Public Comments

Chairperson Marshall asked if there were any public comments and there were none.

Closing Remarks

Chairperson Marshall asked the Commissioners if they wanted to make closing comments.

Commissioner Sherman commented that he is proud of the work that has been done and that he unfortunately has to consider the economic impact on the cost of doing business in California.

Commissioner Rhay concurred and further commented that she represents different groups and voices in the community. She agreed with the fine work that is being done.

Commissioner Robinson congratulated the Counties and CDI for the work being done and acknowledged that fraud and the schemes are more complicated and expensive.

Chairperson Marshall thanked everyone for their work and commitment. He commented on the counties' outreach and collaborative efforts, their cross communication, the movement of data, and the future impact from DIR.

Motion

Commissioner Robinson made a motion to adjourn. Commissioner Rhay seconded it.

Action

A roll call vote was taken. The motion was passed unanimously.

The meeting was adjourned at 1:30 pm.

Approved 1.10.18